

The ALJ found claimant sustained a 5% permanent partial disability to the left middle finger and a 5% permanent partial disability to the left ring finger, based upon the ratings of the court-appointed neutral physician, Dr. Edward Prostic. The ALJ also found claimant likely would not require future medical treatment and accordingly denied claimant's request that future medical be left open.

Claimant requests review of the following: (1) “[c]ausation of Claimant’s injuries”<sup>1</sup>; (2) the nature and extent of claimant’s disability; and (3) future medical treatment.

Respondent argues the ALJ's Award should be affirmed.

The issues for Board determination are:

1. What is the causation of claimant’s injuries?
2. What is the nature and extent of claimant's disability?
3. Is claimant entitled to future medical treatment?

#### **FINDINGS OF FACT**

Having reviewed the evidentiary record, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings:

On October 30, 2011, while working for respondent as a corrections officer, claimant sustained crush injuries to his left middle and left ring fingers when he caught those fingers between a steel door and a metal cabinet.

Dr. Neal Lintecum, a board certified orthopedic surgeon with a sub-specialty in hand surgery, was authorized to treat claimant. Dr. Lintecum initially evaluated claimant on November 7, 2011. The doctor diagnosed crush injuries to the left ring and left middle fingers, with fractures of the distal phalanx of both fingers<sup>2</sup>. Blood was drained from claimant’s middle finger and he was placed in a splint. Claimant attended a number of follow-up appointments with Dr. Lintecum and was treated with physical therapy.

Claimant saw Dr. Lintecum for the last time on March 7, 2012, when Dr. Lintecum released claimant from treatment. X-rays showed the fractures had healed in good position with no sign of problems. Claimant complained of stiffness and the doctor noted a bit of erythema (redness of the skin) at the distal radial corner of the left ring fingernail. Dr. Lintecum found claimant was “functioning reasonably well”<sup>3</sup> and imposed no permanent restrictions. Dr. Lintecum testified claimant had no symptoms of carpal tunnel syndrome.

---

<sup>1</sup> Application for Review at 1. Claimant contends all of his current complaints are related to the crush injuries he sustained to his left ring and left middle fingers, not to carpal tunnel syndrome, a condition unrelated to the accident.

<sup>2</sup> Under the Kansas Workers Compensation Act, the middle or long finger is referred to as the second finger and the ring finger is denominated the third finger.

<sup>3</sup> Lintecum Depo., Ex. 2 at 12.

Based upon the *AMA Guides*,<sup>4</sup> Dr. Lintecum opined claimant sustained no permanent impairment to his left middle and left ring fingers. He also opined claimant did not need any future medical treatment.

Claimant continued working for respondent after the accident.

At the ALJ's request, claimant was evaluated by Dr. Edward Prostic, a board certified orthopedic surgeon, on May 22, 2013. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Dr. Prostic diagnosed crush injuries to the left middle and left ring fingers with fractures of the distal phalanges of both fingers.

Dr. Prostic testified he did not find any deficits in claimant's range of motion in the injured digits. He opined: "I found significant sensory loss of those fingers but I attributed it to something other than this accident."<sup>5</sup> Dr. Prostic found the sensory loss resulted from carpal tunnel syndrome. Dr. Prostic testified:

Q. And did you find any medical records that you reviewed that showed any type of symptoms he had ever complained about on a farm?

A. No.

Q. Tell us, if you could, all the evidence that you base that upon that he had had some symptoms related to farm activities?

A. Well, I didn't dictate it in my report, but he and I must have had a conversation to -- for me to understand that he works on a farm and I thought the forceful use of his hands at the farm was more likely to cause carpal tunnel syndrome than his work as a corrections officer.

Q. So as far as today, whatever evidence you based that upon, you don't have the specifics to testify about. Is that right?

A. Correct.<sup>6</sup>

Based on the *AMA Guides*, Dr. Prostic rated claimant's left ring finger at 5% permanent functional impairment and the left middle finger at 5%. The doctor testified regarding his ratings:

---

<sup>4</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>5</sup> Prostic Depo. at 6.

<sup>6</sup> *Id.* at 6-7.

Q. Can you tell us where the 5 percent came from on both fingers?

A. Well, it's giving him the benefit of residual soreness of his fingertips.

Q. Like in the AMA Guides, what table is that from?

A. It is not in the Guides.

Q. Okay. Is it just a -- where did you come up with the number then?

A. Well, I made it up. The Guides would say 0 impairment because I believe he has full motion and I believe his sensory abnormality is from a different cause.<sup>7</sup>

Dr. Prostic further testified:

It [claimant's loss of sensation in the injured fingers] is much more likely to be caused by the chain saw use and other activities of the farm and his significant overweight and perhaps diabetes than it is the crush injury to the tips of his fingers.<sup>8</sup>

Dr. Daniel Zimmerman evaluated claimant on September 6, 2012, at the request of claimant's counsel. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Claimant complained of discomfort affecting the left second and third digits. Dr. Zimmerman diagnosed crush injuries to those fingers and found severe sensory change and restricted range of motion in both injured fingers. Dr. Zimmerman opined the prevailing factor for the finger injuries was claimant's accident of October 30, 2011. Dr. Zimmerman found that although claimant had reached maximum medical improvement (MMI), he would more than likely need future medical treatment.

Dr. Zimmerman admitted claimant's injuries were restricted to the left middle and ring fingers<sup>9</sup> and that he and claimant did not discuss claimant's farm activities.<sup>10</sup>

Based on the *AMA Guides*, Dr. Zimmerman rated claimant's left second digit (middle finger) at 63% and the left third digit (ring finger) at 65%. Dr. Zimmerman did not consider the possibility that claimant had carpal tunnel syndrome. The following exchange occurred on cross-examination of Dr. Zimmerman:

---

<sup>7</sup> Prostic Depo. at 18.

<sup>8</sup> *Id.* at 10.

<sup>9</sup> Zimmerman Depo. at 10-11.

<sup>10</sup> *Id.* at 21.

Q. The-- just so we're clear, you determined-- to reach these numbers of 63 percent and 65 percent you did conclude that a good portion of that is his reported severe sensory change. Is that correct?

A. That's correct.

Q. To what extent does the sensory change contribute as opposed to the range of motion?

A. Well, I mean, I told you sensory change in both digits is 50 percent.

Q. That was the bulk of the rating, was it not?

A. Yes. Yes.<sup>11</sup>

Claimant testified regarding his current symptoms:

A. I still have pain in them [his injured fingers]. This knuckle here is still to me anyway feels swollen. They don't bend. I mean, this finger especially it will just barely move out here on the end. That's about as far as it will go, (indicating). I have pain clear up into my hand sometimes clear up into my arm here, I assume like a tendon or something.

Q. Okay.

A. My hand will my -- whole hand almost will go numb if I'm like on the farm running the chain saw or something like that it will -- it will make the whole hand go numb. This finger right here is numb right now, tingling feeling.<sup>12</sup>

Claimant testified he had decreased range of motion in both fingers, loss of grip strength in the left hand, and numbness and tingling in both fingers. Claimant testified he used Aleve or Ibuprofen for pain.

Sometime between January 2013 and October 2013, claimant was diagnosed with diabetes. Claimant takes medication for that condition.

#### **PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2011 Supp. 44-501b provides in part:

---

<sup>11</sup> *Id.* at 22-23.

<sup>12</sup> Claimant Depo. at 19.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.<sup>13</sup> It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trial court must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.<sup>14</sup>

K.S.A. 2011 Supp. 44-510d provides in relevant part:

(b) If there is an award of permanent disability as a result of the injury . . . compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

. . . .

(3) For the loss of a second finger, 30 weeks.

(4) For the loss of a third finger, 20 weeks.

. . . .

(23) Loss of or loss of use of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

The Board is persuaded the ALJ correctly found that the rating opinions of the neutral examining physician, Dr. Prostic, were entitled to greater weight under the circumstances of this claim than the opinions of Drs. Lintecum and Zimmerman. The ALJ therefore properly awarded permanent partial disability benefits based on a 5% functional impairment to each injured finger.

---

<sup>13</sup> *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

<sup>14</sup> *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 785, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

Dr. Prostic was appointed by the ALJ and his ratings are entitled to considerable weight, particularly in light of his status as a neutral examiner. Dr. Prostic found no loss of range of motion and his other examination findings were negative, except for numbness in claimant's injured fingers. Dr. Prostic attributed claimant's numbness to left carpal tunnel syndrome, a condition unrelated to claimant's injuries. The doctor concluded claimant's fractures had healed with "minimal disability."<sup>15</sup> Dr. Prostic ratings were based on residual soreness in claimant's injured fingers. Dr. Prostic admitted his 5% rating to each finger was not strictly based on the *AMA Guides*. However, the *AMA Guides* did not take into account claimant's residual pain complaints, which the doctor opined should be considered in rating claimant's impairment. Moreover, under the *AMA Guides* pain can be considered when assessing impairment of function.<sup>16</sup>

The Board also finds persuasive Dr. Prostic's explanation of how claimant's loss of sensation in his fingers was likely related to claimant's farm labor and not the October 30, 2011, accidental injuries.

Although claimant told Dr. Lintecum at his last office visit that he was experiencing stiffness, the doctor could not recall what his specific range of motion findings were on that date, nor did his treatment records reflect those findings.

Dr. Zimmerman rated claimant's left long finger at 50% impairment due to loss of sensation, with the remainder of the rating based on loss of range of motion of that finger, for a total of 63% of the left long finger. Dr. Zimmerman rated claimant's left ring finger at 50% impairment due to loss of sensation, with the remainder of the rating based on loss of range of motion of that finger, totaling 65% for the left ring finger.<sup>17</sup> Dr. Zimmerman apparently did not consider the possible presence of left carpal tunnel syndrome causing the numbness in claimant's injured fingers, nor did Dr. Zimmerman discuss claimant's farm work and its role in causing numbness in claimant's fingers. Dr. Zimmerman did not explain how claimant's accidental injuries caused the numbness in claimant's injured fingers.

When claimant was found to have reached MMI and was released from treatment by Dr. Lintecum, a rebuttable presumption arose under K.S.A. 2011 Supp. 44-510h(e) that respondent's obligation to provide medical treatment was terminated. Under the statute, the presumption may be overcome by medical evidence claimant will require additional treatment. Claimant has not overcome that presumption in this claim. Only Dr. Zimmerman opined claimant would require future medical treatment, but his opinion is

---

<sup>15</sup> Prostic's IME report (May 22, 2013) at 2.

<sup>16</sup> *AMA Guides*, Chapter 15.

<sup>17</sup> Zimmerman Depo. At 6-8.

outweighed by the testimony of Drs. Prostic and Lintecum. The ALJ properly denied future medical treatment.

**CONCLUSIONS OF LAW**

1. As a result of his accidental injuries, claimant sustained a 5% permanent functional impairment to his left long finger and a 5% permanent functional impairment to his left ring finger. Claimant is awarded permanent partial disability benefits based on those ratings, as specifically set forth in the ALJ's Award.

2. The claimant is denied future medical treatment.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>18</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

**AWARD**

**WHEREFORE**, Board finds that the Award of ALJ Rebecca Sanders dated February 10, 2014, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2014.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

---

<sup>18</sup> K.S.A. 2011 Supp. 44-555c(k).



c: Roger Fincher, Attorney for Claimant,  
rdfincher@ksjustice.com; debbieb@ksjustice.com; heather@ksjustice.com

Ronald Laskowski, Attorney for Respondent and its Insurance Carrier,  
Ron@LaskowskiLaw.com; kristi@LaskowskiLaw.com

Hon. Rebecca Sanders, ALJ